

## MEMORANDUM

**DATE:** March 15, 2005

**SUBJECT:** Environmental Justice News for the Week Ending March 6, 2005

**FROM:** Nicholas Targ, Counsel & Associate Director for Integration  
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This summarizes select environmental justice news and government actions for January 1, 2005, through the week ending March 6, 2005. Except as noted, this review is confined to Lexis/Nexis queries conducted under the following search: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/50 minorit! or low\*\*\*income) or (executive order 12898) or (civil right! w/50 environmental)". Please note that we have not included multiple articles covering the same topic or articles pertaining to international or foreign-based environmental justice issues, unless they have a direct connection to the United States.

For the week ending March 6, 2005, the following news is current:

### **A. News-**

#### **1. "An Airport's Big Deal," Governing Magazine, Washington, District of Columbia (March 2005).**

The article reports on the \$500 million "community benefits agreement" negotiated between the LAX airport authority and a coalition of two-dozen groups, private, locally-based organizations. The article reports that "[t]he 10-month negotiation was born out of the concerns of the local groups about the airport and was based on earlier 'community benefits agreements' [that] some of the same groups had worked out on other mega-projects, including the Staples Center, a massive entertainment facility in downtown Los Angeles." Jerilyn Mendoza, an attorney with the Environmental Justice Project, who helped negotiate the agreement, is quoted in the article as stating that "this was the most expeditious way to address the community concerns regarding these impacts without having to go through litigation."

#### **2. Colin Brown, "Corporate Polluters Will Have to Pay for Their Damage," The Independent, England (February 28, 2005).**

The Labor Party is considering the establishment of an environmental platform for upcoming elections, according to the article. The article states that “[t]he most far-reaching proposal in a new Environmental Justice Bill would give a right to communities to order an environmental impact assessment of developments such as new factories, roads or waste incineration plants.”

**3. Anton Cauto, “Corpus Air Tests Raising Concern,” San Antonio Express-News, San Antonio, Texas (February 27, 2005).**

Tests conducted by the Corpus Christi-based group, Citizens for Environmental Justice, found “high levels” of 1,3 butadiene in the Corpus Christi area. The group conducting the study is “being helped by the National Refinery Reform Campaign and using testing equipment [the] environmental group won last summer in a settlement with the Environmental Protection Agency.” The article reports that the group has asked the state to investigate the source of the pollution, but that the state has yet to respond.

**4. Paul Bonner, “NCCU Digs for Junkyard Poison,” The Herald-Sun, Durham, North Carolina (February 25, 2005).**

The article reports that North Carolina Central University, in cooperation with the Environmental Protection Agency, is examining whether salvage yards near houses in the Durham area have released hazardous substances. “‘We knew this area was one where there was not much data,’ said Yolanda Banks Anderson, who chairs NCCU’s Environmental Science program...” Dr. Anderson is leading the study “[u]nder the rubric of ‘environmental justice’ for disadvantaged communities...,” the reports.

**5. Vanessa Col “Parlier Picked for Pilot Air Study; State Develops Plan to Monitor City for Effects of Pesticides,” Fresno Bee, Fresno, California (February 24, 2005).**

The California State Department of Pesticide Regulation will conduct a community-level pesticides monitoring pilot study in Parlier, a rural city located in the State’s agricultural San Jauquin Valley. The pilot program, part of an environmental justice initiative launched by the California Environmental Protection Agency, will start in the summer. “‘It’s a step in the right direction in understanding the contribution of pesticides and how it impacts the health of farmworkers,’ said Dr. Virginia Rondero Hernandez, associate director of research and evaluation for the Central California Children’s Institute in Fresno.” The article reports that the “selection was based on factors such as the levels of pesticide use and whether the community has a significant ethnic population of children and adults.”

**6. Mark Johnston, “An opportunity to reform ADEM,” Birmingham News, Birmingham Alabama (February 20, 2005) *[NT Notes: Mark Johnston is a priest in the Episcopal Church and co-chair of the ADEM Reform Coalition.]***

The author of the editorial states that the “change in leadership at ADEM could mean an opportunity for reforming an agency that is fundamentally broken.” “[The ADEM Reform Coalition], a group of 38 member organizations representing more than 20,000 diverse Alabamians, has developed a list of priorities for successful reform. . . . The ARC’s priorities for success fall into five categories: enforcement, organizational change, public access, environmental justice and fiscal health.”

## **B. Litigation**

### **1. *St. Bernard Citizens for Environmental Quality v. Chalmette Refining*, C.A. No. 04-0398 SECTION "R" (1) (E.D. LA Feb. 3, 2005).**

The court granted the citizen-based environmental organizations' motion for summary judgement, finding that: (1) the organizations had standing to sue under the citizen suit provisions of the Clean Air Act and Emergency Planning and Community Right to Know Act; and (2) the facility violated its permit terms on 34 occasions. The court opined, "Organizations like plaintiffs' have standing to bring a suit on behalf of their members if: (1) their members would have standing to sue in their own right; (2) the interests they seek to protect are germane to their purpose as an organization; and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members." In support of the second standing consideration, one of the plaintiffs, the Louisiana Bucket Brigade, stated that they were founded, in part, "to address 'environmental health and justice issues in Louisiana.'"

### **2. *Thompson v. Department of Housing and Urban Development*, 348 F. Supp. 2d 398 (D. MD January 29, 2004).**

The court found, among many other issues decided, that the Department of Housing and Urban Development failed to adequately consider a regional approach to address desegregation of public housing. Based on extensive evidence, including evidence relating to the environmental conditions in which HUD had located public housing, the court opined, "It is high time that HUD live up to its statutory mandate to consider the effect of its policies on the racial and socioeconomic composition of the surrounding area and thus consider regional approaches to promoting fair housing opportunities for African-American public housing residents in the Baltimore Region. This Court finds it no longer appropriate for HUD, as an institution with national jurisdiction, essentially to limit its consideration of desegregative programs for the Baltimore Region to methods of rearranging Baltimore's public housing residents within the Baltimore City limits." The court will consider appropriate relief in the next phase of the trial.

## **C. Regulatory/Legislative,**

### **1. EPA, "Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Final Recipient Guidance)," 70 Fed. Reg. 10625 (March 4, 2005).**

The summary accompanying the notice provides, "EPA's Office of Civil Rights is soliciting comments on [the Draft Final Recipient Guidance]. This guidance significantly revises the previous Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) issued for public comment in June 2000. The revisions made in this document reflect and include public involvement considerations suggested in comments... This guidance has been developed for recipients of EPA assistance that implement environmental permitting programs. It discusses various approaches and suggests tools recipients may wish to use to help enhance the public involvement aspects of their current permitting programs and reduce potential issues related to Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's regulations implementing Title VI." Comments must be submitted on or before 30 days from March 4, 2005. The notice is available at:

**2. EPA, Environmental Impact Statements and Regulations; Availability of EPA Comments, Fed. Reg. 70 FR 6003 (February 4, 2005).**

In its evaluation of Draft Environmental Impact Statements, required under § 309 of the Clean Air Act, EPA raised environmental concerns (EC-2) with respect to the "U.S. 219 Improvements Project, Meyersdale to Somerset, Pennsylvania," and associated permits request from the Army Corps of Engineers. Specifically, the notice provides "EPA has environmental concerns with the proposed project regarding impacts to wetlands, endangered species, aquatic resources, air quality, and environmental justice."

**3. HR 427, "Environmental Justice Act of 2005," introduced by Mark Udall (D-CO) on January 26, 2005. Status: Referred to House Energy and Commerce on January 26, 2005; Referred to the Subcommittee on Environment and Hazardous Materials on February 25, 2005; Referred to House Resources Committee on January 26, 2005.**

This bill would, in large part: (1) codify Executive Order 12898; (2) require mitigation measures and an environmental justice analysis for all decisions covered by the National Environmental Policy Act, including those requiring only environmental assessments; and (3) establish an advisory committee on environmental justice.

**4. Alabama, HB 487, "Environmental Equity Representation Act," introduced by Representative William Clark (D-Mobile) on February 17, 2005.**

This bill would add two members to the Environmental Management Commission of the Alabama Department of Environmental Management, including: (1) a person who is a registered voter in good standing, an active participant in environmental justice issues from the environmental justice community of Alabama, and has served as an elected officer of an environmental organization during the three years immediately preceding his or her appointment. This individual would "represent the affected communities that have suffered most from pollution and contamination." (2) A researcher or instructor in the environmental sciences from one of Alabama's Historically Black or Colleges or Universities.

**5. California, AB 597, Introduced by Member of the Assembly Cindy Montañez (D-39 Dist.) on February 17, 2005. Status: Referred to Environmental Safety and Toxic Materials Committee on March 3, 2005.**

Among many other things, this brownfields legislation would "require the agency to evaluate and respond to all relevant comments to determine if the response plan is appropriate, proper, and adequate, and to consider the issue of environmental justice for communities most impacted, including low-income and racial minority populations," according to the Legislative Counsel's digest accompanying the bill.

**6. Mississippi, SB 2589, "Mississippi Environmental Equity Act," introduced by Senator Deborah Jeanne Dawkins (D-48th Sen. Dist.) on January 17, 2005. Status: Referred to Environmental Protection, Conservation and Water Resources on January 17, 2005; Died in Committee on February 1, 2005.**

Among other things, this bill would: (1) require the Department of Environmental Quality to promulgate regulations (a) providing “for a comprehensive assessment of the extent to which identifiable populations are disproportionately exposed to potentially harmful substances in the environment on the basis of race, ethnicity or socio-economic status,” and (b) “that prevent and reduce any such disproportionate exposure; (2) define with specificity the meaning of “low-income community” and “minority community;” and (3) establish an Environmental Equity Task Force, comprised of private individuals, “which shall have the power and duty to determine the issuance of moratoriums on the siting or permitting of facilities that manufacture, process, store or release to the environment any potentially harmful substance,” based on equity considerations.

**7. Nebraska, Legislative Bill 351, introduced by Senator Donald Priester (D-5th Dist.) on January 11, 2005. Status: Referred to Natural Resources Committee on January 13, 2005; Notice of Hearing, and advance to general file on February 23, 2005.**

This bill would revise the membership provisions for the State’s Environmental Quality Council by establishing, among other things, that one member of the Council be “representative of minority populations or low-income persons.”

**8. New York, Assembly Bill 1808, “AN ACT to amend the environmental conservation law, in relation to the location of environmental facilities,” Introduced by Member of the Assembly Richard L. Brodsky (D-92nd Dist.) January 21, 2005. Status: Referred to the Environmental Conservation on January 21, 2005.**

Among other things, this bill makes the finding that, “there has been an inequitable pattern in the siting of environmental facilities in minority and economically distressed communities, which have borne a disproportionate and inequitable share of such facilities. Consistent with its commitment to providing equal justice for its citizens, the state has a responsibility to establish requirements for the consideration of such decisions by state and local governments in order to insure equality of treatment for all communities.” If enacted, the bill would require the state to identify “proposed action[s] which] may reasonably be expected to cause or increase a disproportionate or inequitable or both disproportionate and inequitable burden on ... minority communities or economically distressed areas or minority communities or economically distressed areas that are directly or significantly indirectly affected by the action,” and develop criteria to consider such impacts in the facility siting process.

**9. New York, AB 4190, “An Act to amend the environmental conservation law, in relation to establishing a permanent environmental justice advisory group and an environmental justice interagency coordinating council,” introduced by Member of the Assembly Luis M. Diaz (D-86 Assembly Dist.) on February 9, 2005. Status: Referred to the Environmental Conservation on February 9, 2005.**

This bill would establish a permanent “Environmental Justice Advisory Group,” and an “Environmental Justice Interagency Coordinating Council.” Among other things, the Advisory Group would: (1) develop and adopt, within one year, an environmental justice policy for the State of New York; (2) monitor State agencies’ compliance with the policy; (3) advise and make recommendation to agencies; and (4) hold hearings. The Coordinating Council, composed of the heads of listed agencies and departments, would, among other things: (1) serve as a clearinghouse for state agencies and the public for

information on environmental justice policies; (2) make annual reports to the governor and the Legislature concerning the implementation and effectiveness of agency environmental justice policies, including the adequacy of funding available and difficulties encountered.